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CIVIL AND POLITICAL RIGHTS

Letter dated 26 May 2000 from the Permanent Representative of Tunisia to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

I have the honour to annex hereto* the reply of the Tunisian Government to the report submitted by Mr. Abid Hussain, Special Rapporteur of the Commission on Human Rights on the promotion and protection of the right to freedom of opinion and expression concerning his mission to Tunisia from 6 to 10 December 1999 (E/CN.4/2000/63/Add.4).

I should be grateful if you would arrange for it to be circulated as an official document of the Commission on Human Rights under agenda item 11 concerning civil and political rights.

(Signed) Hatem BEN SALEM
Ambassador
Permanent Observer

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* The annex is reproduced as received, in the language of submission and in English only.

Annex

REPLY OF THE TUNISIAN GOVERNMENT TO THE REPORT SUBMITTED BY THE SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION (E/CN.4/2000/63/Add.4)

1. Mr. Abid Hussain, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, conducted a mission in Tunisia at his request from 6 to 10 December 1999 at the invitation of the Tunisian Government.

2. This mission led to the publication of a report, on the content of which the Tunisian Government makes the following observations.

I. PRELIMINARY OBSERVATIONS

3. It is regrettable that the report was drawn up, published and distributed without first consulting the Tunisian Government, despite the promises made by Mr. Abid Hussain during his stay in Tunisia and contrary to normal practice.

4. The report does not reflect the true status of freedom of opinion and expression in Tunisia, nor does it take into account the countless achievements resulting from the reforms undertaken since the Constitution was amended on 7 November 1987.

5. The way the Special Rapporteur proceeded is contrary to the ethical rules that are accepted as governing missions carried out under special procedures. Essentially, any mission of this kind requires total impartiality with regard to the sources of information, whether governmental or otherwise.

6. The content of the report confirms the clear impression, indeed the certainty, that the Special Rapporteur has merely reproduced allegations being spread by tiny groups of extremists and fundamentalists. Whole pages are reproduced in the report, without any concern as to their validity.

7. Although the Tunisian authorities provided the Special Rapporteur at his request with the most plentiful information and clarifications, he did not pay the necessary attention to the data provided and omitted to give them their rightful place in his report. On the contrary, he gave precedence to the allegations concerning alleged violations, with the aim of obscuring the documented arguments presented by the Tunisian authorities.

8. The Special Rapporteur includes in his report allegations that go back more than 10 years and concerning which the competent Tunisian authorities addressed appropriate replies at the proper time to the United Nations mechanisms concerned.

9. The Special Rapporteur exceeds his mandate on many points by raising questions that come under the jurisdiction of mechanisms other than the Commission on Human Rights.

10. In view of all these observations, the Tunisian Government totally repudiates the report.

II. OBSERVATIONS ON THE PROMOTION AND PROTECTION OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION

11. First of all, it must be stressed that Tunisia has never claimed to have achieved the full implementation of human rights. Moreover, no country can claim to have achieved this. Consequently, Tunisia accepts any constructive criticism but rejects all unfounded allegations arising out of prejudice. The report contains a great deal of incorrect information and hasty and unfounded assessments and conclusions regarding the media.

12. Contrary to the observations made by the Special Rapporteur concerning freedom of opinion, expression, the press and publication, Tunisia's commitment to these freedoms and its recognition of the importance of the role played by the media form an integral part of the project for a new society described by President Ben Ali in the Declaration of 7 November 1987.

13. Gradual progress has been made towards attaining this objective, by introducing numerous legislative measures and reforms aimed at strengthening the principle of freedom of the press in practice and at promoting a more open and pluralistic media landscape. It is by no means easy to move within a single decade from a monolithic press regime to an entirely competitive regime. The fact remains that considerable progress has been achieved.

14. The diversity of the Tunisian press is illustrated not only by the existence of over 200 national publications and periodicals and over 800 foreign publications that are freely offered for sale but also by the publication and sale of newspapers of different political groupings, such as "*El Mostaqbal*" (Democratic Socialist Movement), "*Attarik Al Jadid*" ("*Ettajdid*" Party), "*El Maoukef*" (Progressive Socialist Union), "*El Watan*" (Union of Democratic Unionists), and "*Al Wahda*" (People's Unity Party).

There are also the independent newspapers and the publications of trade unions and professional organizations, such as the General Union of Tunisian Workers (UGTT), the Tunisian Union of Industry, Trade and Crafts (UTICA) and the National Union of Tunisian Farmers.

There is reason to wonder whether the Special Rapporteur had the curiosity to consult any of these publications, whose content is varied and sometimes very critical, not to say virulent, in order to reach his conclusion.

15. To claim that the Tunis Afrique Presse news agency holds the monopoly on large areas of national news is to display flagrant ignorance of the real situation. There is nothing to force newspapers to confine themselves to the information distributed by this agency. Incidentally, several Tunisian newspapers have their own regional and local correspondents in most parts of the country, and then of course there are the foreign sources such as the worldwide and national news agencies.

16. Over 60 foreign correspondents are accredited in Tunisia. Every year many journalists from all parts of the world visit our country, where they find favourable conditions to practise their profession freely. In 1999 over 1,200 foreign journalists visited Tunisia.

17. It should be stressed that the exercise of freedom of opinion and expression has been strengthened since 1988 by some important amendments to the Press Code. Article 1 of the Code states: "*Printing, the press and bookselling are free ...*". Thus the publication of periodicals is subject only to prior notification to the Ministry of the Interior, whereupon a receipt is issued to the publication's editor. This is a general procedural rule that in no way infringes the principle of freedom of publication. Decisions by the administration concerning the issue of the receipt may be appealed against in the competent courts. It is up to those concerned to use these remedies.

18. The registration of copyright, a procedure that exists in many countries including the western democracies, is a simple formality intended to preserve the national cultural heritage and is certainly not used "*to block all undesirable publications*", as the Special Rapporteur claims. It is therefore entirely wrong to claim that the Tunisian authorities systematically use this procedure to prevent the appearance of certain publications.

19. It is worth pointing out, first of all, that practically everywhere in the world the regulations governing publication provide for a similar registration formality. Moreover, the Tunisian legal system does not rule out appeals against unfavourable decisions in regard to registration of copyright.

20. The "reading commission" forms part of the legal machinery for registration of copyright and operates to preserve and protect the principles and values enshrined in the Constitution. In this respect, the same remedies are open to all those concerned.

21. With regard to the "purchasing commission", it is totally incorrect to claim that its "*management and decisions are the direct responsibility of the Ministry of the Interior*". The purchasing commission, which is subject to the Ministry of Culture alone, has been entrusted by the public authorities with the task of encouraging publishing and dissemination in Tunisia.

22. The State grants all kinds of advantages to assist publishing houses, including:

- Reduction of customs duties on imports of equipment and products necessary to the publishing industry;
- Reduction in charges for national and international communications and telecommunications in order to promote the dissemination of newspapers;
- Entirely free rail transport;
- State subsidies for part of the cost of newsprint and the printing costs of the opposition parties' newspapers, in addition to the financial aid that these parties receive.

23. Moreover, the public authorities facilitate access by journalists to sources of information. Ministers hold regular press conferences at which they reply to journalists' questions on various matters of everyday interest to Tunisians. These meetings with the press are held whenever necessary, but in any case at least once a month.

24. The political will to strengthen the pluralistic democratic process and to establish the freedom of the press more fully is also reflected in the televised debates that offer all sections of civil society, and particularly the opposition parties, an opportunity to express their views on matters of national or international interest.

25. This will, which motivates the highest authorities of the State, aims to raise freedom of expression to the desired professional level. The President of the Republic has always taken a special interest in promoting the information sector. With this in mind, he has repeatedly called upon the professionals of the sector to play their role in full inasmuch as the State, through legislation protecting journalists, guarantees them favourable conditions for the free practice of their profession.

26. It was this desire to give the media their due responsibility for the promotion of freedom of expression that led the President of the Republic to decide to abolish the State Secretariat for Information on 9 October 1997. The meeting that the President of the Republic held with newspaper editors on 3 May 2000 was intended to explore ways and means of developing the media discourse and of eliminating some of the reflexes that are no longer justified within a democratic and pluralistic climate characterized by respect for the ethical rules of the profession and for freedom of opinion and expression.

Following this meeting, it was decided to involve the professionals of the sector in the work of the Commission responsible for the revision of the Press Code. A second commission was set up to consider ways of further promoting the information sector. The jurisdiction of this commission is not limited, so it will have to consider all matters affecting the sector.

27. It is true that the reception of terrestrial broadcasts of the television channel France 2 has been suspended, but there were sound reasons for this decision since the channel failed to respect the spirit of the agreement concluded with it, in particular the jointly accepted ethical rules. This agreement specifically states that the "*Tunisian Government reserves the right to interrupt at any time the broadcast of any programme segment that might be considered contrary to the ethical rules imposed on its own media*". This is in fact what happened. Despite numerous approaches, the right of reply was systematically denied to the Tunisian leaders. This same attitude also characterized the behaviour of the French daily newspapers: *Le Monde*, *La Croix* and *Libération*.

28. With regard to the new information and communication technologies, Tunisia has made remarkable progress in access to and use of the Internet. Apart from the ease and speed of access provided at the individual level, a national programme is currently under way, paid for entirely from the State budget, which aims at connecting all universities and scientific research institutions to the Internet: connection of secondary schools will follow by stages, by the end of 2001, and future plans involve linking all primary schools to the network.

29. Information technology clubs with gradual connection to the Internet are being set up in all regions of the country, some of them by cultural and educational associations for young people. Moreover, the decision has already been taken to connect all public libraries. Cyber-centres already exist and will be gradually extended to the entire country in the light of the increasingly evident enthusiasm displayed by Tunisians and encouraged by the public authorities.

30. Individuals, associations, businesses and public bodies can obtain access to the Internet simply by applying to the Internet service provider of their choice. The request for access is not subject to any prior authorization from a governmental body. The same applies to the creation and dissemination of Web sites.

31. Moreover, several Internet service providers have been requested to market Internet access services and cover the needs of potential users. These providers have been asked to contribute to the development and spread of the Internet among the general public in Tunisia. A private network, Publinet, is growing fast. The charges for Internet connection have repeatedly been reduced in order to make these services more accessible to the general public.

32. In referring to Internet access, it is regrettable that the Special Rapporteur misinterpreted certain legal texts. He states, without any basis in legal precedent or administrative regulations, that the regime of responsibility laid down by the Press Code is applicable to the Internet.

33. The same comment applies to the observations of the Special Rapporteur concerning public telephone booths that offer a fax service. These telephone booths are businesses governed by legislation designed to provide a service that is accessible to all citizens, under the principle of freedom of trade and industry, and it is unacceptable to make an interpretation that extends legal provisions without the slightest basis in law or legal precedent.

III. OTHER ALLEGATIONS

34. Almost half of the report drawn up by Mr. Abid Hussain concerns matters that do not fall within his jurisdiction, since his mandate is limited to the promotion and protection of the right to freedom of opinion and expression. This confirms the widespread impression that the Rapporteur has allowed himself to be taken in by some documents, which he has simply reproduced. Clearly the intention was not to assist the Tunisian Government to improve the situation regarding rights and freedom of opinion and expression, but to criticize and denigrate. This is far removed from the purpose of his mission and is incompatible with the ethics of United Nations bodies. Consequently, the Tunisian Government is not obliged to comment on the allegations made in that regard. However, it feels duty bound to reply to them, purely in order to re-establish the truth.

1. Political pluralism

35. The Tunisian Government is astonished at the highly unobjective description of the Tunisian political landscape given by the Special Rapporteur. Tunisia has opted for a well-considered and cautious but reliable path to enable those who so wish to join together

within political structures. Faced with extremist and obscurantist threats, however, and in order to protect its clear achievements on the path to progress, Tunisia has legitimately set out to provide itself with the necessary constitutional safeguards.

36. Accordingly, the new article 8 of the Constitution contains the following provisions:

> *"The political parties help to educate citizens so as to organize their participation in political life. They must be organized on a democratic basis. The political parties must respect the sovereignty of the people, the values of the Republic, human rights and the principles regarding personal status.*
>
> *The political parties shall undertake to prohibit all forms of violence, fanaticism, racism and discrimination.*
>
> *The principles, objectives, activities or programme of a political party must not be based essentially on a religion, a language, a race, a sex or a region.*
>
> *All parties are prohibited from having links that make them dependent on foreign parties or interests ..."*

The law on the political parties specifies the conditions for the acceptance of parties. Judicial remedies are available.

37. In view of this it is inconceivable to maintain, as the Special Rapporteur does, that there is a cause-and-effect relationship between the establishment of new political parties and the development of "*true political pluralism*". All the world's democracies organize themselves in accordance with their socio-political make-up and their own systems. Fundamentalist and extremist movements are not recognized as political parties in Tunisia. They do not therefore enjoy the privileges that accompany the status of a political party.

38. It is absurd that the Special Rapporteur should repeat far-fetched allegations that the public funding of political parties, as laid down by law, depends on their relationship with the party in power. This claim is all the more unwarranted because the Rapporteur does not provide a single example in an attempt to support it.

39. It is also worth pointing out that the opposition parties, despite their limited popular support, were able, through the political will of President Zine El Abidine Ben Ali, to enter the Chamber of Deputies for the first time in 1994. They strengthened their presence by securing 20 per cent of the seats in the Chamber in the 1999 elections.

40. In view of the legal framework governing the establishment of political parties, all those who have formed a political association without complying with the established procedures have thereby committed an offence under the ordinary law and have been tried accordingly. To call them political prisoners is a claim without any foundation whatsoever.

41. It is surprising that the Special Rapporteur should bring up cases that go back to the early 1990s concerning leaders of the fundamentalist and terrorist upsurge who endeavoured to

overthrow the republican regime through acts of violence and terrorism. Tunisia was able to bring the situation under control in strict compliance with legality and without resorting to special laws or courts of special jurisdiction. It notes that in bringing up this episode the Special Rapporteur is endeavouring to revive the slanders spread by extremist elements.

2. The judiciary

42. The Tunisian Government rejects the conclusions of the Special Rapporteur and his assessments concerning the independence and impartiality of the judicial system.

43. Thus the claim that the judiciary is influenced by the executive branch is without foundation: the independence of the judiciary is guaranteed by the Constitution, which is the paramount legal text in the hierarchy of laws. The public authorities are careful to safeguard this independence. For their part, the judges endeavour to make it effective.

44. It should be noted that during the past 12 years the judiciary has undergone many reforms affecting both its structures and the ways in which it operates.

45. The trials referred to in the report have no political character since the persons concerned were brought before the courts of general jurisdiction for acts that are punishable under criminal law and which have no relation with political activity of any kind whatsoever.

46. In Tunisia, a State subject to the rule of law, hearings are held in public and the defendants enjoy all the rights and safeguards provided for by law, namely adversarial proceedings and free exercise of defence. Judgements are open to appeal.

47. The two individual cases mentioned by the Special Rapporteur, those of Radhia Nasraoui and Néjib Hosni, were the subject of detailed replies addressed at the appropriate time by the Tunisian authorities to the United Nations mechanisms concerned. The title of "*human rights defenders*" on which they pride themselves does not give them the right to be above the law or to claim any kind of judicial immunity.

48. The allegations of harassment regarding Radhia Nasraoui are unfounded. The robbery at her office was the subject of a judicial investigation which led to the discovery of the perpetrators of the offence, who were prosecuted and sentenced for their acts.

49. As regards the case of Néjib Hosni, the Special Rapporteur has endorsed the distortions of the truth spread by the fundamentalist movement. Contrary to those allegations, Néjib Hosni was not sentenced for "*acts of terrorism*" but simply for forgery and the use of forgeries because in his capacity as a lawyer he forged a real estate conveyancing document for his own benefit. He was never detained beyond the legal time-limits. He was never the subject of any act of violence or inhuman treatment. He did not receive an acquittal. By judicial decision he is banned from exercising the profession of lawyer.

3. Freedom of association

50. The free establishment of associations is governed by the act of 7 November 1959. If the Special Rapporteur believes that this act grants excessive powers to the Minister of the Interior, then he has failed to take into consideration the legislation amending or supplementing the act.

51. The first amendment, which dates from 1988, concerns the repeal of the requirement for prior authorization for the establishment of associations, a simple declaration now being all that is required. The administrative authority can only oppose the establishment of an association by means of an order, in which the grounds are stated in due form, issued to the founders of the association, who have full freedom to appeal to the Administrative Tribunal.

52. The second amendment, which dates from 1992, concerns the adoption of a classification of associations in order to aid the diversification of the fields of action of associations and safeguard their independence, while protecting them from being taken over by political parties.

53. It is fanciful, to say the least, to suggest that the great majority of the 7,000 associations are close to the Government or set up by it. This claim strikes a blow at the various components of Tunisian civil society and disregards their contribution to the promotion of society.

54. The association referred to by the Special Rapporteur was the subject of a refusal order from the Minister of the Interior, stating the reasons, which was notified to those concerned as required by law. The legislation provides for appeal against such decisions.

55. The Special Rapporteur attributes to anonymous sources certain allegations regarding the environment in which associations operate. It is obvious that the unconfessed political aims of these sources obfuscate their approach and lead them to express false judgements and lies. This is undoubtedly what led the Special Rapporteur to misquote the Postal Services Code promulgated by the act of 2 June 1998. Not only is the quotation incorrect, but the Special Rapporteur would also find it impossible to cite any case where judicial proceedings were initiated after the seizure of mail. In reality no seizure of this kind has ever taken place.

It should be pointed out that article 1 of the Code referred to by the Special Rapporteur states: "*The purpose of this Code is to established the conditions for conducting postal activity and to ensure that the public has the right of access to the basic postal services while ensuring the confidentiality of correspondence ...*".

56. Under its mandate, the High-Level Committee on Human Rights and Fundamental Freedoms examines all individual cases referred to it.

57. Contrary to the allegation that the High-Level Committee only rarely has to deal with complaints of violations such as those submitted to the Special Rapporteur, it should be pointed out that a large number of complaints on human rights issues have reached the Committee since 1993. The complaints received have been considered and followed up by the Committee.

58. Moreover, as part of the strengthening of the mandate given to the Committee, its Chairman is empowered to carry out visits to prisons without prior authorization. Several visits

have been made and have enabled the Chairman of the Committee to observe the conditions of detention in these establishments. After each visit a report containing conclusions and suggestions is submitted to the Head of State.

59. Obviously some of the groups to which the Special Rapporteur refers deliberately refrain from resorting to the national bodies so as to discredit them for purely political reasons.

60. The Special Rapporteur seems concerned that there is only one trade union. Here it should be pointed out that the Tunisian Labour Code states the principle of the free establishment of trade unions expressly and clearly and that all legal measures have been taken to ensure the protection of the exercise of trade union rights. Whenever the opinion of workers' organizations is required, the Labour Code uses the expression "*the union organization most representative of workers*".

Finally, it should be pointed out that the initiative for establishing trade unions lies with the workers, not with the State.

4. The status of women

61. While expressing appreciation of the real progress made by Tunisia in the protection and promotion of women's rights, the Special Rapporteur fails to do justice to the work carried out in Tunisia on behalf of women. He refers to the lack of official statistics on violence between spouses even though this is rare in Tunisia, as he himself recognizes.

62. Conjugal violence is not a social problem in Tunisia. It is confined to normal proportions, like other offences associated with the family (abandonment of the family, preventing the free exercise of visiting rights, etc.). These offences are punishable under both criminal law and judicial procedure, and severe sanctions are applied in order to prevent them. At the same time, precedence is given to conciliation as a way of settling family disputes in both criminal and civil cases, in order to safeguard the unity of the family.

63. In view of the foregoing, the recommendations made by the Special Rapporteur are not binding on Tunisia, which remains committed to the fundamental choices it has made in order to put into effect its plan for a new society.